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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,011	03/02/2004	Jeffrey A. Meunier	10886.00632	1288
22908 7590 05/14/2008 BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606				
EXAMINER				
LE, HUYEN D				
ART UNIT		PAPER NUMBER		
2615				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/791,011

Applicant(s)

MEUNIER ET AL.

Examiner

HUYEN D. LE

Art Unit

2615

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☒ Claim(s) 50 and 51 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 8/24/04

DETAILED ACTION

Claim Objections

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 43 have been renumbered as claims 43a and 43b.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. (U.S. patent 5,761,298).

Regarding claims 1-2, 13, 24, 47 and 49, Davis et al. teaches a communications headset which comprises a housing (32) having a speaker driver (113), a nozzle (112, 46, figure 3A), and an acoustically isolating ear piece (46, figures 4, 5 and col. 6, lines 41-46) coupled to the nozzle (figures 3A, 3B).

Davis does not specifically teach the nozzle (112, 46) for insertion into an ear canal. However, Davis does teach that the earbud (46) connecting the acoustic channel (112, figure 3A) is inserted in front of the ear canal for blocking external noises from entering the ear canal (col. 8, lines 61-65).

Since Davis does not restrict to the size for the ear bud (col. 6, lines 43-44), it therefore would have been obvious to one skilled in the art to provide any sizes for the earbud (46) such as the size for inserting into the ear canal for more securing the nozzle (112, 46) to the ear of the wearer and better blocking external noises from entering the ear canal.

Further, Davis does not specifically teach that the earpiece (46) and the housing (32) provide at least 15dB of acoustic isolation as claimed. However, Davis does not restrict to the configurations and sizes for the ear piece (46); it therefore would have been obvious to one skilled in the art to provide any configurations and sizes for the earpiece (46) such as the configuration for providing acoustic isolation at least 15 dB or in the range of 15 to 25 dB from ambient sound over the range of audible frequencies for providing the improved frequency characteristics to the device.

In addition to claim 49, Davis teaches one headset that comprise the first housing, the first nozzle, the first acoustically ear piece and the microphone as mentioned above. Davis does not teach a second housing, a second nozzle and the second earpiece as claimed. However, it

would have been obvious to one skilled in the art to provide another headset which comprises a second housing, a second nozzle and the second earpiece for providing more headsets to the wearer.

Regarding claims 3-6, 26-27 and 40-43a, Davis teaches the ear piece (46) that comprises the openings and a flexible material as claimed (figure 3A, 4, 5 col. 6, lines 37-43).

Regarding claims 7-8, Davis teaches a boom assembly as claimed (16, 17, 18, 20, figures 12, 3A).

Regarding claims 9 and 32, Davis shows the longitudinal direction of the boom assembly defining a first axis and the longitudinal direction of the nozzle defining a second axis. As shown in figures 1 and 3A, the first axis and the second axis intersect and define an angle in a first plane.

Regarding claims 10-15 and 33-38, Davis does not specifically disclose the first angle in a first plane, a second plane and a second angle in the range as claimed. However, Davis does not restrict to any angle for the first axis and second axis, and the boom assembly and the receiver enclosure are adjustable; it therefore would have been obvious to one skilled in the art to provide any angle for the first axis of the boom assembly and second axis of the nozzle (46, 112) such as about 77 and 97 degrees or about 87 degrees, or the second angle of between 23 and about 43 degrees or 33 degrees for better fitting to the ear of the wearer (figures 1, 2, 3A, col. 2, lines 49-66).

Regarding claims 16, 19-21 and 39, Davis shows a cable (40) as claimed (figures 1, 3A, 3B).

Regarding claims 17 and 45, Davis shows a flexible ear support (13).

Regarding claims 18 and 46, Davis does not specifically disclose that the earpiece (46) solely supports the headset on the user. However, providing an earpiece solely supporting the headset on the user is known in the art.

Therefore, it would have been obvious to one skilled in the art to provide the headset of Davis which is solely supported by the earpiece (46) for a compact and lightweight headset.

Regarding claims 22-23, Davis teaches the microphone is directional microphone or selected from the group as claimed (col. 5, lines 60-62).

Regarding claims 25 and 48, Davis shows the microphone (102) which is isolated from the driver signal of the transducer (113).

Regarding claims 28, Davis et al. teaches a communications headset which comprises a housing (32) having a speaker driver (113), a nozzle (112, 46, figure 3A), and an acoustically isolating ear piece (46, figures 4, 5 and col. 6, lines 41-46) coupled to the nozzle (figures 3A, 3B). Davis further shows a first axis, a second axis and a third axis (figures 1, 2, 3A, 3B), a boom (16, 17, 20) and a directional microphone (col. 5, lines 60-62) as claimed.

Davis does not specifically teach the nozzle (112, 46) for insertion into an ear canal. However, Davis does teach that the earbud (46) connecting the acoustic channel (112, figure 3A) is inserted in front of the ear canal for blocking external noises from entering the ear canal (col. 8, lines 61-65).

Since Davis does not restrict to the size for the ear bud (col. 6, lines 43-44), it therefore would have been obvious to one skilled in the art to provide any sizes for the earbud (46) such as the size for inserting into the ear canal for more securing the nozzle (112, 46) to the ear of the wearer and better blocking external noises from entering the ear canal.

Regarding claim 29, Davis shows a cable (40) as claimed (figures 1, 3A, 3B).

Regarding claims 30-31, Davis shows the boom (16, 17, 20) as claimed.

Regarding claims 43b and 44, Davis does not specifically teach that the earpiece (46) and the housing (32) provide at least 15dB of acoustic isolation as claimed. However, Davis does not restrict to the configurations and sizes for the ear piece (46); it therefore would have been obvious to one skilled in the art to provide any configurations and sizes for the earpiece (46) such as the configuration for providing acoustic isolation at least 15 dB or in the range of 15 to 25 dB from ambient sound over the range of audible frequencies for providing the improved frequency characteristics to the device.

4. Claims 1, 3, 18 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryant et al. (U.S. patent 3,440,365).

Regarding claims 1, 18 and 26, Bryan teaches a housing (30) comprising a speaker driver (41), a nozzle (45, 46, 47, 71, 72, 73), and an acoustic isolating earpiece (70). Bryan does not specifically teach that the earpiece (70) and the housing (30) provide at least 15dB of acoustic isolation as claimed. However, Bryan does teach a tight seal between the headset device (10, 30, 70) and the ear of the wearer; it therefore would have been obvious to one skilled in the art to provide any structure for the inserting earpiece (70) and the housing (30) of Bryan such as the structure providing the acoustic isolation at least 15 dB or in the range of 15 to 25 dB from ambient sound over the range of audible frequencies for providing the improved frequency characteristics and a comfort to the wearer.

Regarding claim 3, Bryan does not specifically teach a flexible material for the earpiece (70). However, providing the inserting earpiece made of a flexible material is known in the art.

Since Bryan does not restrict to any material for the earpiece (70); it therefore would have been obvious to one skilled in the art to provide any material for the earpiece (70) of Bryan such as a flexible material for providing a comfort to the wearer.

Allowable Subject Matter

5. Claims 50-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUYEN D. LE/
Primary Examiner, Art Unit 2615

HL
May 11, 2008